

**Opinion No. 67-130**

November 1, 1967

**BY:** OPINION OF BOSTON E. WITT, Attorney General

**TO:** Mr. Robert Granger Commissioner of Securities Department of Banking 113  
Washington Ave. Santa Fe, New Mexico

**QUESTION**

QUESTION

Does Subsection J of Section 48-18-22J, N.M.S.A., 1953 Compilation, apply to mining and oil securities as defined in Sections 48-18-24 through 48-18-24.7, N.M.S.A., 1953 Compilation?

CONCLUSION

Yes.

**OPINION**

{\*206} **ANALYSIS**

Section 48-18-24, N.M.S.A., 1953 Compilation, provides as follows:

"Mining or oil securities -- Permit required. -- No person shall sell or offer for sale within or from this state any mining or oil security or securities except those exempt, or sold in transactions exempt under section 48-18-24.7 New Mexico Statutes Annotated, 1953 Compilation, unless the issuer of such security or securities shall have received permission for the sale of such security or securities from the commissioner as hereinafter provided."

Section 48-18-24.7 covers exempt securities and transactions and provides in Subsection D as follows:

"Exempt securities or transactions. -- The provision of sections 48-18-24 through 48-18-24.5, New Mexico Statutes Annotated 1953 Compilation, shall not apply to any of the following securities or transactions:

\* \* \* \*

D. Any transaction exempted by subsections A through G of section 48-18-22 New Mexico Statutes Annotated."

The language that now appears in section 48-18-24.7 was originally passed in Laws of 1955, Chapter 131, Section 9. The comparable Subsection D at that time was paragraph (a) (4) of Section 9 which provided "any transaction exempted by Subsections (a) through (g) of Section 7 of this Act."

Section 4 of the Laws of 1955, Chapter 131 provided for the registration of securities with the Commissioner that were not exempted or covered by the mining and oil securities sections or the Investment Fund Shares Section. In 1959 the securities laws were re-written in part. Subsection D of Section 48-18-24.7 was written exactly as it appears today and the exemptions in Subsection A through G of § 48-18-22 were the same as they were under the Laws of 1955. Also in 1959, a Subsection J was added to Section 48-18-22. That Subsection as presently written provides:

"J. The issuance and sale by any corporation organized under the laws of this state of its securities at a time when the number of security holders does not, and will not in consequence of the sale, exceed twenty-five (25) and:

(1) the seller reasonably believes that all buyers are {\*207} purchasing for investment; and

(2) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer;"

It should also be noted that in the Laws of 1959 a new section of the law, 48-18-19.5 was enacted and it read:

"Any security other than those required to be registered under Sections 48-18-24 or 48-18-25, New Mexico Statutes Annotated, 1953 Compilation may be registered by qualifications."

A new Section 48-18-19.6 was enacted which sets forth the requirements of a registration statement of registration by qualification. Section 48-18-19.6 did not contain any reference to mining or oil securities.

In 1965 some of the securities laws were given a major revision, and this is the state of the law today. Included in this revision was a complete rewrite of Section 48-18-22. However Section 48-18-24.7 was not amended. Consequently, paragraphs A through G of Section 48-18-22 are no longer the same paragraphs that were referred to in Subsection D of Section 48-18-24.7 when it was enacted. None of those paragraphs still appear as originally written regardless of the present letter designation. It is possible however to compare the present language with the original and hazard a guess as to which of the present paragraphs were in the original A through G. Old paragraph A appears to be the present F; old paragraph B appears to be the present G; old paragraph C seems to be the present A; We could not recognize the old paragraph D in any of the present exemptions. Old paragraph E appears to be the present H; old

paragraph F does not seem to be included at present; and finally old paragraph G seems to be the present K.

A further revision made in 1965 was the repeal of Section 48-18-19.6 and the amendment of Sections 48-18-19.1 and 48-18-19.5. Section 48-18-19.5 was amended to include the requirements for a registration statement by qualification and the initial paragraph of that section which now provides: "Any security may be registered by qualification", and the addition of Subsection B (12) which provides:

"(12) in connection with mining or oil securities, a statement showing the location of the gas or oil properties, of the mine or other plant or property owned or operated by the issuer, with their plans, the amount of work done on them, the amount of cash expended for improvements and the condition of the plant and machinery connected with them;"

Section 48-18-19.1 was rewritten and among other things Subsection B, paragraph (11) was added and it provides:

"(11) in connection with mining or oil securities, a statement showing the location of the gas or oil properties, or the mine or other plant or property owned or operated by the issuer, with their plans, the amount of work done on them, the amount of cash expended for improvements and the condition of the plant and machinery connected with them."

The noted amendments to Sections 48-18-19.1 and 48-18-19.5 are significant when read in connection with Section 48-18-22 which provides in part: "Except as expressly provided in this section, sections 48-18-19 through 48-18-19.11 and 48-18-20 through 48-18-20.14 New Mexico Statutes Annotated, 1953 Compilation, do not apply to". Thereafter there are exemptions lettered A through N, which, of course, is section J included in your question.

Because of the amendments to {\*208} Sections 48-18-19.1, 48-18-19.5 and 48-18-22, it appears that there is clearly a conflict between these sections and Section 48-18-24. The conflict arises because under the plain language of Section 48-18-24.7, Subsection J of Section 48-18-22 is not applicable to oil and mining securities. An even further conflict is presented by the fact that Section 48-18-24 cannot be read in harmony with Sections 48-18-19.1 and 48-18-19.5 which allows mining and oil securities to be registered by notification and qualification.

Because of the conflict between the sections noted above, it is our opinion that the problem presented falls within the general rule that where two statutes have the same object and relate to the same subject, if the later statute is repugnant to the former, the former is repealed by implication to the extent of the repugnancy. **State v. Valdez**, 59 N.M. 112, **Petition of Sosa**, 74 N.M. 182. This results in the following situation. Mining and Oil securities can be registered by notification or qualification as well as under Section 48-18-24. Since they can be registered by notification or qualification they can

enjoy all the exemptions under Section 48-18-22 which covers exempt transactions and the exemptions under Section 48-18-21 which covers exempt securities. If a mining or oil security is not exempted they can be registered either by notification, qualification or under Section 48-18-24 depending on what the registering party desires and whether or not the securities can meet the requirements for registration by notification as expressed in paragraphs (1) and (2) of Subsection A of Section 48-18-19.1.

By: Roy G. Hill

Assistant Attorney General